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SENATE BILL 1111

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DON KIDD

AN ACT

RELATING TO INTOXICATING LIQUOR OR DRUGS; AMENDING THE LIQUOR CONTROL ACT AND THE DELINQUENCY ACT; PROVIDING FOR THE FORFEITURE AND SEIZURE OF A MOTOR VEHICLE FOR A SECOND OR SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Motor Vehicle Code is enacted to read:

"NEW MATERIAL SEIZURE AND FORFEITURE OF MOTOR VEHICLE-- PROCEDURE-- EXCEPTION. --

A. A motor vehicle shall be subject to seizure and forfeiture if the seizure is incident to an arrest for driving under the influence of intoxicating liquor or drugs pursuant to

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1 Section 66-8-102 NMSA 1978.

2 B. In the event of seizure pursuant to Subsection A
3 of this section, proceedings under the Rules of Civil Procedure
4 for the District Courts and Subsection D of this section shall
5 be instituted promptly.

6 C. Upon conviction of a first offense, the motor
7 vehicle shall be subject to seizure and forfeiture for a period
8 of no more than ninety days.

9 D. A motor vehicle seized pursuant to Subsection A
10 of this section for a second or subsequent offense shall not be
11 subject to replevin, but is deemed to be in the custody of the
12 seizing law enforcement agency, subject only to the orders and
13 decrees of the district court. When a motor vehicle is seized
14 pursuant to the provisions of this section, a law enforcement
15 officer may remove the property to a place designated by the
16 district court or by the head of the officer's agency for
17 disposition in accordance with the law.

18 E. When a vehicle is forfeited pursuant to this
19 section, the seizing law enforcement agency shall sell the motor
20 vehicle at a public auction, and the proceeds, after all costs
21 for impoundment, forfeiture and sale are repaid, shall be
22 forwarded to the state treasurer for credit to the crime victims
23 reparation fund pursuant to Section 31-22-21 NMSA 1978 within
24 thirty days. "

25 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 32, as amended) is amended to read:

2 "32A-2-3. DEFINITIONS. -- As used in the Delinquency Act:

3 A. "delinquent act" means an act committed by a
4 child that would be designated as a crime under the law if
5 committed by an adult, including the following offenses:

6 (1) pursuant to municipal traffic codes or the
7 Motor Vehicle Code:

8 (a) any driving while under the influence
9 of intoxicating liquor or drugs;

10 (b) any failure to stop in the event of
11 an accident causing death, personal injury or damage to
12 property;

13 (c) any unlawful taking of a vehicle or
14 motor vehicle;

15 (d) any receiving or transferring of a
16 stolen vehicle or motor vehicle;

17 (e) any homicide by vehicle;

18 (f) any injuring or tampering with a
19 vehicle;

20 (g) any altering or changing of an engine
21 number or other vehicle identification numbers;

22 (h) any altering or forging of a driver's
23 license or permit or any making of a fictitious license or
24 permit;

25 (i) reckless driving;

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1 (j) driving with a suspended or revoked
2 license; or

3 (k) any offense punishable as a felony;
4 (2) buying, attempting to buy, receiving,
5 possessing or being served any alcoholic liquor or being present
6 in a licensed liquor establishment, other than a restaurant or a
7 licensed retail liquor establishment [~~except in the presence of~~
8 ~~the child's parent, guardian, custodian or adult spouse~~]. As

9 used in this paragraph, "restaurant" means any establishment
10 where meals are prepared and served primarily for on-premises
11 consumption and that has a dining room, a kitchen and the
12 employees necessary for preparing, cooking and serving meals.
13 "Restaurant" does not include establishments, as defined in
14 regulations promulgated by the director of the special
15 investigations division of the department of public safety, that
16 serve only hamburgers, sandwiches, salads and other fast foods;

17 (3) any felony violation of the provisions of
18 Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations
19 adopted by the state game commission that relate to the time,
20 extent, means or manner that game animals, birds or fish may be
21 hunted, taken, captured, killed, possessed, sold, purchased or
22 shipped and for which a fine may be imposed or a civil damage
23 awarded;

24 (4) any violation of Section 30-29-2 NMSA 1978,
25 regarding the illegal use of a glue, aerosol spray product or

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1 other chemical substance;

2 (5) any violation of the Controlled Substances
3 Act;

4 (6) escape from the custody of a law
5 enforcement officer or a juvenile probation or parole officer or
6 from any placement made by the department by a child who has
7 been adjudicated a delinquent child; or

8 (7) any violation of Section 30-15-1.1 NMSA
9 1978 regarding unauthorized graffiti on personal or real
10 property;

11 B. "delinquent child" means a child who has
12 committed a delinquent act;

13 C. "delinquent offender" means a delinquent child
14 who is subject to juvenile sanctions only and who is not a
15 youthful offender or a serious youthful offender;

16 D. "detention facility" means a place where a child
17 may be detained under the Children's Code pending court hearing
18 and does not include a facility for the care and rehabilitation
19 of an adjudicated delinquent child;

20 E. "felony" means an act that would be a felony if
21 committed by an adult;

22 F. "misdemeanor" means an act that would be a
23 misdemeanor or petty misdemeanor if committed by an adult;

24 G. "restitution" means financial reimbursement by
25 the child to the victim or community service imposed by the

1 court and is limited to easily ascertainable damages for injury
2 to or loss of property, actual expenses incurred for medical,
3 psychiatric and psychological treatment for injury to a person
4 and lost wages resulting from physical injury, which are a
5 direct and proximate result of a delinquent act. "Restitution"
6 does not include reimbursement for damages for mental anguish,
7 pain and suffering or other intangible losses. As used in this
8 subsection, "victim" means any person who is injured or suffers
9 damage of any kind by an act that is the subject of a complaint
10 or referral to law enforcement officers or juvenile probation
11 authorities. Nothing contained in this definition limits or
12 replaces the provisions of Subsections A and B of Section
13 32A-2-27 NMSA 1978;

14 H. "serious youthful offender" means an individual
15 fifteen to eighteen years of age who is charged with and
16 indicted or bound over for trial for first degree murder. A
17 "serious youthful offender" is not a delinquent child as defined
18 pursuant to the provisions of this section; and

19 I. "youthful offender" means a delinquent child
20 subject to adult or juvenile sanctions who is:

21 (1) fourteen to eighteen years of age at the
22 time of the offense and who is adjudicated for at least one of
23 the following offenses:

24 (a) second degree murder, as provided in
25 Section 30-2-1 NMSA 1978;

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- 1 (b) assault with intent to commit a
2 violent felony, as provided in Section 30-3-3 NMSA 1978;
- 3 (c) kidnapping, as provided in Section
4 30-4-1 NMSA 1978;
- 5 (d) aggravated battery, as provided in
6 [~~Subsection C of~~] Section 30-3-5 NMSA 1978;
- 7 (e) aggravated battery upon a peace
8 officer, as provided in [~~Subsection C of~~] Section 30-22-25 NMSA
9 1978;
- 10 (f) shooting at a dwelling or occupied
11 building or shooting at or from a motor vehicle, as provided in
12 Section 30-3-8 NMSA 1978;
- 13 (g) dangerous use of explosives, as
14 provided in Section 30-7-5 NMSA 1978;
- 15 (h) criminal sexual penetration, as
16 provided in Section 30-9-11 NMSA 1978;
- 17 (i) robbery, as provided in Section
18 30-16-2 NMSA 1978;
- 19 (j) aggravated burglary, as provided in
20 Section 30-16-4 NMSA 1978;
- 21 (k) aggravated arson, as provided in
22 Section 30-17-6 NMSA 1978; or
- 23 (l) abuse of a child that results in
24 great bodily harm or death to the child, as provided in Section
25 30-6-1 NMSA 1978;

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1 (2) fourteen to eighteen years of age at the
2 time of the offense and adjudicated for any felony offense and
3 who has had three prior, separate felony adjudications within a
4 three-year time period immediately preceding the instant
5 offense. The felony adjudications relied upon as prior
6 adjudications shall not have arisen out of the same transaction
7 or occurrence or series of events related in time and location.
8 Successful completion of consent decrees are not considered a
9 prior adjudication for the purposes of this paragraph; or

10 (3) fourteen years of age and adjudicated for
11 first degree murder, as provided in Section 30-2-1 NMSA 1978."

12 Section 3. Section 60-7B-1 NMSA 1978 (being Laws 1993,
13 Chapter 68, Section 22) is amended to read:

14 "60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO
15 MINORS-- POSSESSION. --

16 A. It is a violation of the Liquor Control Act for
17 any person licensed pursuant to the provisions of the Liquor
18 Control Act, or any employee, agent or lessee of that person, if
19 he knows or has reason to know that he is violating the
20 provisions of this section, to:

21 (1) sell, serve or give any alcoholic beverages
22 to a minor or permit a minor to consume alcoholic beverages on
23 the licensed premises;

24 (2) buy alcoholic beverages for or procure the
25 sale or service of alcoholic beverages to a minor;

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1 (3) deliver alcoholic beverages to a minor; or

2 (4) aid or assist a minor to buy, procure or be
3 served with alcoholic beverages.

4 B. It is a violation of the Liquor Control Act for
5 any minor to buy, attempt to buy, receive, possess or permit
6 himself to be served with any alcoholic beverages.

7 C. In the event any person except a minor procures
8 any other person to sell, serve or deliver any alcoholic
9 beverages to a minor by actual or constructive misrepresentation
10 of any facts calculated to cause, or by a concealment of any
11 facts the concealment of which is calculated to cause the person
12 selling, serving or delivering the alcoholic beverages to the
13 minor to believe that such minor is legally entitled to be sold,
14 served or delivered alcoholic beverages and actually deceiving
15 him by such misrepresentation or concealment, then that person
16 and not the person so deceived by such misrepresentation or
17 concealment shall have violated the Liquor Control Act.

18 D. As used in the Liquor Control Act, "minor" means
19 any person under twenty-one years of age.

20 ~~[E. Violation of this section by a minor with~~
21 ~~respect to possession is a petty misdemeanor. Upon conviction,~~
22 ~~the offender may be sentenced in accordance with Section 31-19-1~~
23 ~~NMSA 1978. Any sentence imposed pursuant to this subsection may~~
24 ~~be suspended in the discretion of the court upon the condition~~
25 ~~that:~~

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1 ~~(1) the minor accepts the suspension of his~~
2 ~~driver's license for a period not to exceed three months,~~
3 ~~whereupon the trial court may dismiss the possession of~~
4 ~~alcoholic beverage charge and it shall not be considered a~~
5 ~~conviction. In the event the minor's driver's license is to be~~
6 ~~suspended, the trial court shall inform the motor vehicle~~
7 ~~division of the taxation and revenue department of the action;~~
8 ~~provided, however, if the minor drives during the period of~~
9 ~~suspension, then the court may impose a fine, jail sentence or~~
10 ~~both, such fine and sentence not to exceed the maximums imposed~~
11 ~~for petty misdemeanors or may impose punishment pursuant to~~
12 ~~Paragraph (2) of this subsection; and~~

13 ~~(2) the minor assist in a community project~~
14 ~~designated by the court, up to fifty hours, whereupon the trial~~
15 ~~court may dismiss the possession of alcoholic beverage charge~~
16 ~~and it shall not be considered a conviction]~~

17 E. Violation of Subsection B of this section by a
18 minor with respect to possession is a misdemeanor. Upon
19 conviction, the offender shall be sentenced in accordance with
20 Section 31-19-1 NMSA 1978. In addition to that sentence, if the
21 offender possesses a motor vehicle, for a first offense that
22 motor vehicle shall be subject to seizure and forfeiture upon an
23 order issued by the trial court or without an order if the
24 seizure is incident to the arrest, for a period of no more than
25 ninety days.

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1 F. Upon a second or subsequent offense, if the
2 offender possesses a motor vehicle, that motor vehicle shall be
3 subject to seizure and forfeiture upon an order issued by the
4 trial court, or without an order if the seizure is incident to
5 the arrest. A motor vehicle seized under this section shall not
6 be subject to replevin, but is deemed to be in the custody of
7 the seizing law enforcement agency, subject only to the orders
8 and decrees of the district court. When a motor vehicle is
9 seized pursuant to the provisions of this section, a law
10 enforcement officer may remove the property to a place
11 designated by the district court or by the head of the officer's
12 agency for disposition in accordance with the law.

13 G. When a vehicle is forfeited pursuant to this
14 section, the seizing law enforcement agency shall not return the
15 motor vehicle to a financial institution that has provided the
16 loan to the minor, if any, but shall sell the motor vehicle at a
17 public auction, and the proceeds, after all costs for
18 impoundment, forfeiture and sale are repaid, shall be forwarded
19 to the state treasurer for credit to the crime victims
20 reparation fund pursuant to Section 31-22-21 NMSA 1978 within
21 thirty days."

22 Section 4. EFFECTIVE DATE. -- The effective date of the
23 provisions of this act is July 1, 1997.